

1,186 DAYS INTO IG REPORT COVERING DRAGNET, LEAHY CALLS FOR ANOTHER

As I've been tracking, DOJ's Inspector General Office – now led by Michael Horowitz – has been working on a report on the use of Section 215 and Pen Register/Trap and Trace authorities up through 2009 for 1,186 days, well over 3 years. We have yet to see that outsider review of all the problems the NSA admitted in 2009, 4 years ago, and so NSA's incredible claim it was too stupid to know what it was doing has been accepted unquestioningly.

On Monday, Patrick Leahy and several other Senate Judiciary Committee Senators called on the Intelligence Committee Inspector General, Charles McCullough, to conduct a similar inquiry for the period since 2009.

Recently declassified documents appear to reveal numerous violations of law and policy in the implementation of these authorities, including what the FISA Court characterized as three “substantial misrepresentation[s]” to the Court. These declassified documents also demonstrate that the implementation of these authorities involves several components of the Intelligence Community (IC), including the National Security Agency, Department of Justice, Federal Bureau of Investigation, Central Intelligence Agency, and the Office of the Director of National Intelligence, among others.

We urge you to conduct comprehensive reviews of these authorities and provide a full accounting of how these authorities are being implemented across the Intelligence Community. The IC

Inspector General was created in 2010 for this very purpose. Comprehensive and independent reviews by your office of the implementation of Sections 215 and 702 will fulfill a critical oversight role. Providing a publicly available summary of the findings and conclusions of these reviews will help promote greater oversight, transparency, and public accountability.

In conducting such reviews, we encourage you to draw on the excellent work already done by the Inspectors General of several agencies, including the Department of Justice, in reviewing these authorities. But only your office can bring to bear an IC-wide perspective that is critical to effective oversight of these programs. The reviews previously conducted have been more narrowly focused – as might be expected – on a specific agency.

In particular, we urge you to review for calendar years 2010 through 2013:

- *the use and implementation of Section 215 and Section 702 authorities, including the manner in which information – and in particular, information about U.S. persons – is collected, retained, analyzed and disseminated;*
- *applicable minimization procedures and other relevant procedures and guidelines, including*

whether they are consistent across agencies and the extent to which they protect the privacy rights of U.S. persons;

- *any improper or illegal use of the authorities or information collected pursuant to them; and*
- *an examination of the effectiveness of the authorities as investigative and intelligence tools.*

We'll see how McCullough responds to this. My impression thus far has been that he is too close to the IC Agencies. Plus, he's very busy conducting insider leak investigations.

But even though we've been waiting forever for the IG Report covering the earlier period, apparently Leahy has learned one thing from it. He gave McCullough a deadline this time.

Please proceed to administratively perform reviews of the implementation of Section 215 of the USA PATRIOT Act and Section 702 of FISA, and submit the reports no later than December 31, 2014.

If all goes well, this should provide a quasi-independent review of the programs before they get extended again in 2015.